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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 344

ARTHUR L. BELL, INDIVIDUALLY, AND AS AN ASSOCIATE OF AND DIVISION SUPERINTENDENT OF "MANKIND UNITED," A VOLUNTARY ASSOCIATION, FOR AND IN BEHALF OF SAID "MANKIND UNITED" AND THE ASSOCIATES THEREOF; MAUDE ASKEW, EUGENE WADSWORTH BROWN, J. FRED BURKEY, LAWRENCE COOK, A. RAY ELSEA, JACOB GLOCKLER, BAY BURNS SHARP, SHANNA JAKEMAN, PAULINE KELSO, MAX THEODORE MILLER AND HOMER G. WILCOX,

Petitioners,

vs.

R. B. HOOD, THEODORE CRUISE, PHILIP BOWSER, GEORGE M. LANGDON, WILLIAM GIESON, EUGENE GREER, J. H. ANGELL, J. SECRIST, JOHN ROCHE, MALCOM C. POWRIE, CECIL C. HUMPHREYS, A. F. SCHEIMERHORN, WILLIAM BRANIGAN, JOHN DOE WOLFE, DON C. SWANSON, CARL B. SHERMAN, EARL K. ADAMS, HOWARD H. DAVIS, ROBERT T. PUGH, EDWARD A. FURBUSH, O. WILSON FARRELL, DENNIS G. SMITH, HERBERT J. NUBLISH, ROBERT O'KEEFE, EARL P. STATEN, ROBERT MONTGOMERY, NEWELL WILLIAMS, RICHARD DOE DEVINE, RICHARD DOE BULLFRASS, JOHN C. NORRIS, WALT BUTLER, MIKE CASSIDY, PAUL J. O'FARRELL, JOHN W. SCHALLER, LOUIS D. WINE, MERLE ARMSTRONG, JOHN PHILIP MANTON and FRANCES JOHN GOOD,

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

A. L. WIRIN,
257 South Spring Street, Los Angeles 12,
RUSSELL E. PARSONS,
306 West Third Street, Los Angeles 13,
Counsel for Petitioners.

The Myers Legal Press, Los Angeles. Phone MUtual 4961.

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IN THE

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Supreme Court of the United States:

The petitioners respectfully allege:

A.

Summary Statement of the Matter Involved.

This petition brings to this Court for decision the question as to whether a United States District Court has jurisdiction in a suit for damages against federal officers, charged in a civil complaint to have violated the rights of the citizen to be free from unreasonable searches and seizures as guaranteed by the Fourth Amendment, and to be free from deprivation of liberty without due process of law by unlawful imprisonment, in violation of the Fifth Amendment.

The United States District Court for the Southern District of California ordered the petitioners' complaint dismissed, on its own motion, although no objection to the jurisdiction of the District Court, on the ground that the cause did not arise under the Constitution or laws of the United States,[1] was made by the defendants, appearing through the United States Attorney [R. I, 136, 149]. The Ninth Circuit Court of Appeals affirmed [R. II, 168, 169].

The complaint [R. I, 3-30] is thus aptly summarized by the Court of Appeals below [R. II, 168, 170]:

> "It is set out in the complaint that defendants, through the medium of unlawful and unreasonable searches and seizures, have violated the Fourth

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[1]Title 28, United States Code, Sec. 41 (1). The text of the section is set forth in the the Appendix.

Amendment to the personal injury of the several plaintiffs and that such defendants have invaded plaintiffs' immunities as provided by the Fifth Amendment to the effect that no person * * * shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; * * *.' It is therefore alleged and argued by the plaintiffs that they have a right to recover personal judgments in the federal district court against the defendants involved for injuries sustained. . . .

"At the time of the alleged invasion of plaintiffs' rights each plaintiff stood indicted as of December 18, 1942, by a federal grand jury of violating Section 34, Title 50, U. S. C. A. No trial had been held.

"It is alleged that the defendants, on the day the indictment was returned, unlawfully conspired[2] with

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[2]The recitals of "conspiracy" in the complaint were unnecessary to state a cause of action against the defendants. These allegations may, and should be, deemed mere surplusage. In order that the "conspiracy" portions of the complaint might not becloud the issues in this case, and in an effort to prevent the Circuit Court below from positing its decision upon an irrelevant and spurious issue, the petitioners filed with the Clerk of the Circuit Court below a verified "Proposed Amended Complaint for Damages for False Imprisonment and Unlawful Search and Seizure by Federal Officers"; and also filed a Notice of Motion and a Motion that the Circuit Court order a reversal of the judgment of the District Court with instructions to said District Court to grant the appellants (Petitioners) leave of Court to file an Amended Complaint. The text of the "Proposed Amended Complaint" is set forth in Appendix "A", attached to said Motion. The proceedings in the Circuit Court upon the Notice of Motion and Motion appear in volume II of the Record, subsequent to page 180. The Circuit Court below denied the Motion [R. II, 178, 179.]

each other to act beyond their authority as said Federal Bureau of Investigation agents and police officers respectively, and agreed that they would abridge the Constitutional rights of the plaintiffs as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States to be free from the deprivation of liberty and property without due process of law, and to be free from unreasonable searches and seizures, and agreed unlawfully to simultaneously, in the early morning of December 18th, 1942, search the homes of the individual plaintiffs herein without any warrants of search or seizure, and unlawfully to seize the papers, documents and effects of said plaintiffs and of 'Mankind United', and falsely to imprison the individual plaintiffs by unlawfully arresting some of the individual plaintiffs without a warrant of arrest and unreasonably to delay the taking of all of the individual plaintiffs before a committing officer, in order to effectuate the unlawful searches and seizures aforesaid.'

"'That thereafter, and on the 18th day of December, 1942, as will appear more particularly hereinafter, the defendants and each of them, in order to carry out the terms and conditions of the illegal conspiracy aforesaid, and solely for the purpose of carrying out said terms and conditions, did arrest and imprison the individual plaintiffs herein, and did search the homes of said plaintiffs, and seize and carry away books, papers and effects of said individual plaintiffs and of said "Mankind United".'

"It is alleged that as to plaintiff Bell the following occurred. Defendants Cruise, Bowser, Langdon, Gieson Greer, and two named fictitiously broke doors of his residence, entered, and arrested Bell. The defendants had no search warrant or warrant of arrest. They searched the entire premises leaving them in confusion and disorder. They took Bell and held him for several hours away from the premises and did not take him before a magistrate. They took thousands of documents, papers, and records belonging to 'Mankind United', which were entrusted to Bell and took $8,500.00 in money. They took property belonging to Bell and his wife including safe deposit boxes. During a considerable period Bell was held incommunicado and not allowed to see his attorney who was just outside the door, and he was questioned. The allegations are to the effect that at about the same time all the other plaintiffs were subject to essentially the same illegal treatment, though in detail varying, by one or more of the defendants.

"It is apparent that each plaintiff personally seeks compensatory damages for alleged illegal arrest, false imprisonment, the forceable removal of his person from one place to another, the searching of his premises illegally and unreasonably, the seizing of property belonging to him and others, and the questioning without affording him the aid or advice of an attorney."

The Circuit Court below acknowledged that:

> *"There can be no question but that the complaint states strong cases and if the allegations have any foundation in truth, the plaintiffs'* (petitioners') legal *rights have been ruthlessly violated."* [R. II, 173].[3]

1. Opinions of the Court Below.

The opinion of the Circuit Court of Appeals below is as yet unreported. It appears in the Record at II, 168. The oral opinion of the District Judge is unreported. Its text is in the Record at I, 145.

2. Jurisdiction.

Jurisdiction of this Court is invoked under Judicial Code, Section 240 (a); 28 U. S. Code, Section 347 (a).

The judgment of the Circuit Court of Appeals below was entered on June 7, 1945 [R. II, 179].

Hence the Petition for Certiorari herein is timely.

3. Question Presented.

Has a United States District Court jurisdiction in a civil suit seeking damages against Federal officers, alleged to have violated, though an abuse of power,[4] rights secured by the Constitution?

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[3]The decision of the Circuit Court will be analyzed and criticized, *infra*, at p. 19.

[4]The phrase "abuse of power" is borrowed from Chief Justice Hughes in *Philadelphia Company v. Stimpson*, 223 U. S. 605, 619.

B.

Reasons Relied on for Allowance of the Writ.

1. *The Court below has decided an important question involving the jurisdiction of the United States District Courts, apparently never heretofore precisely determined by this Court.*

That a United States District (or Circuit) Court has jurisdiction in a suit for damages against federal officers acting in excess of their authority seems never heretofore to have been questioned in, or by, this Court. Indeed, such jurisdiction has been assumed by this Court in a line of cases beginning with *Little v. Barreme*, 2 Cranch 170 (1804)—a noteworthy decision written by Chief Justice Marshall upholding damages against a United States Naval officer in the sum of $8,504.00 for his unlawful seizure of a vessel. So in *Tracey v. Swartwout*, 10 Pet. 80 (1886), such jurisdiction was assumed. Again in *Mitchell v. Harmony*, 13 How. 115 (1851), a judgment of the United States Circuit Court was affirmed by this Court against military officers in the sum of $90,806.44, for unlawful seizure of private property.

In *Belknap v. Schild*, 161 U. S. 10 (1895), jurisdiction of a United States Circuit Court against a federal officer, in a suit for damages, was impliedly assumed by this Court when it reversed a judgment because the case was in equity, "without prejudice to an action at law against the defendants," presumably in a United States Circuit Court.

Another suit in a United States Circuit Court is *Cammeyer v. Newton*, 4 Otto (94 U. S.) 225 (1877).

No decision of this Court has assumed or intimated any lack of jurisdiction in the federal courts of original jurisdiction, to entertain a suit for damages against federal officers, alleged to have violated any federal constitutional right of any citizen.

2. *The Circuit Court below has decided an important question in conflict with applicable decisions of this Court.*[5]

The paucity of opinion by this Court upon the question at issue herein is compensated for by a recent decision by this Court on the general subject as to when a case "arises under the Constitution and laws of the United States," under Title 28, U. S. C., Section 41 (1) so that a United States District Court has jurisdiction over it.[6] That case is *Tunstall v. Brotherhood of Locomotive Firemen and Engineers*, 323 U. S. 210.

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[5]On the precise question as to whether a federal District Court has jurisdiction in a suit against federal officers seeking damages resulting from an alleged unreasonable search and seizure, there seems to be only one decision supporting the opinion of the Circuit Court below. It is by a United States District Court, *Taylor v. DeHart*, 22 Fed. (2d) 206 (D. C. Mo., 1926).

[6]This point is developed more fully in the supporting brief herein, *infra*, at pp. 13, 17.

Other decisions of this Court with which the judgment of the Court below seems to be in disaccord are *Gully v. First National Bank*, 299 U. S. 109; *Bock v. Perkins*, 139 U. S. 628; *Howard v. United States*, 184 U. S. 676; *U. S. ex rel. Rogers v. Conklin*, 68 U. S. 714; *Cohen v. Virginia*, 6 Wheat. 264, and *Osborn v. Bank of the United States*, 9 Wheat. 738.[7]

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[7]Still other decisions of this Court seem to have been ignored by the Circuit Court below. They sustain the jurisdiction of a federal Court to accord relief against federal officers acting in abuse of power, on the equity side of the Court's process. They are: *Philadelphia Company v. Stimpson*, 223 U. S. 605; *Goltra v. Weeks*, 271 U. S. 536 and others. It would seem that it can make no difference whether the suit against a public officer for "abuse of power" is for damages resulting from an abuse committed, or is for an injunction to restrain an abuse threatened; for Title 28, U. S. C. A., Sec. 41 (1) confers jurisdiction upon the United States District Courts:

> "where the matter in controversy . . . . arises under the Constitution or laws of the United States . . . . of *all* suits of a civil nature at *common law or equity*." (Italics ours.)

The heart of the question is whether a federal right is in issue: if the federal right is threatened by a federal officer acting beyond his authority, the citizen's remedy is by injunction, on the equity side of the federal court; if the federal right has been abridged, the remaining judicial remedy against the federal officer is by an action for damages, on the law side of the federal court.

Conclusion.

Wherefore, your petitioners pray that this Court issue a Writ of Certiorari to the Circuit Court of Appeals for the Ninth Circuit; and that thereupon the judgment of said Circuit Court of Appeals affirming the judgment of the District Court below be set aside.

ARTHUR L. BELL, individually, and as an Associate of and Division Superintendent of "Mankind United," a Voluntary Association, for and in behalf of said "Mankind United" and The Associates thereof: MAUDE ASKEW, EUGENE WADSWORTH BROWN, J. FRED BURKEY, LAWRENCE COOK, A. RAY ELSEA, JACOB GLOECKLER, BAY BURNS SHARP, SHANNA JAKEMAN, PAULINE KELSO, MAX THEODORE MILLER and HOMER G. WILCOX,

Petitioners.

By A. L. WIRIN and RUSSELL E. PARSONS,
Counsel for Petitioners.

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

For a statement showing the opinions of the Courts below, the basis on which the jurisdiction of this Court is claimed, the questions presented, and a statement of the case, reference is here made to the foregoing Petition for Writ of Certiorari.

Specifications of Errors.

The judgment of the Circuit Court of Appeals is contrary to law in that:

I.

The United States District Court had jurisdiction over the petitioners' cause of action against the defendants, agents of the Federal Bureau of Investigation—said cause of action being an action for damages resulting from alleged unlawful searches and seizures, in violation of the Fourth Amendment, and from alleged false imprisonment in violation of the Fifth Amendment.

II.

The Circuit Court below erred in denying the petitioners' Motion to Reverse Judgment, and in refusing to instruct the United States District Court below to grant leave to the petitioners to file an amended complaint.

ARGUMENT.

I.

The United States District Court Had Jurisdiction Over the Petitioners' Cause of Action Against the Defendants—Agents of the Federal Bureau of Investigation—Said Cause of Action Being an Action for Damages Resulting From Alleged Unlawful Searches and Seizures, in Violation of the Fourth Amendment, and From Alleged False Imprisonment in Violation of the Fifth Amendment.*

The petitioners' cause of action would seem to meet the requirements as to original federal jurisdiction first enunciated by Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat. (19 U. S.) 264, 378:

> "A case in law or equity . . . may truly be said to arise under the constitution or a law of the United

*The jurisdiction of the District Court is thus stated in the original complaint [R. I. 3]:

> "Jurisdiction of this Court is founded upon a Federal question arising under the Fourth and Fifth Amendments to the Constitution of the United States, and Title 5, U. S. Code, Sections 300a[1] as fully appears hereinafter. The matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00). Jurisdiction of this Court is founded upon the Federal question involving the rights of the individual plaintiffs and each of them to be free from deprivation of liberty without due process of law by false and unlawful imprisonment; and the Constitutional rights of all of the plaintiffs to be free from unreasonable searches and seizures. All of the persons who participated in the acts to be hereinafter complained of, with the exception of the defendant Merle Armstrong, were at the time of the commission of said acts, and at all times herein have been, officers of the Federal Government, to-wit, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, and claim to have acted under and by virtue of the Provisions of Sections 300 and 300a of Title 5, U. S. Code aforesaid, and

[1] 5 U. S. C., Sec. 300 and Sec. 300a are set forth in the Appendix herein.

States, whenever its correct decision depends upon the construction of either."

In the case at bar the correct decision of the case depends upon the construction to be given by the federal courts to the Fourth and Fifth Amendments to the United States Constitution and to Title 5, Sections 300, 300a, of the U. S. Code.

The complaint, to put the case somewhat differently, discloses federal jurisdiction because its allegations come within the tests of federal jurisdiction as outlined by Jus-

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have acted in concert as is more particularly set forth hereinafter."

The jurisdiction of the District Court is set forth more fully and more carefully in the verified "Proposed Amended Complaint" submitted to the Court of Appeals below, as follows:

"Jurisdiction of this Court is founded upon a Federal question arising under the Fourth and Fifth Amendments to the Constitution of the United States; and Title 5, U. S. Code, Sections 300 and 300a, as more fully appears hereinafter. The matter in controversy exceeds, exclusive of interest and costs, the sum of three thousand dollars ($3,000.00). Jurisdiction of this Court is founded upon the Federal question involving the rights of the individual plaintiffs and each of them to be free from deprivation of liberty without due process of law by false and unlawful imprisonment in violation of the Fifth Amendment to the Constitution; and the rights of all of the plaintiffs to be free from unreasonable searches and seizures, in violation of the Fourth Amendment. All of the defendants at all times herein were and are officers of the Federal Government, to-wit, Special Agents of the Federal Bureau of Investigation, U. S. Department of Justice, and claim to have acted under and by virtue of the provisions of, and under the authority of Section 300 and 300a of Title 5, U. S. Code aforesaid, and as said federal officers, and, within the scope of their authority as said federal officers, and solely because of said authority, and as said officers.

"Said defendants and each of them, however, abused their power and authority as said federal officers, and as said

tice Cardozo in *Gully v. First National Bank*, 299 U. S. 109. As Justice Cardozo put it (at p. 112):

"How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action."

". . . The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction *or* effect, 'and defeated if they receive another.' . . . A

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agents of the Federal Bureau of Investigation, as will appear more particularly hereinafter.

"The District Court of the United States for the Southern District of California has jurisdiction in the premises, more particularly, in that it is a suit of a civil nature arising under the Constitution and the laws of the United States, in the following respects:

"The construction or effect of the following constitutional and statutory provisions is in issue:

"A. Constitutional Provisions.

1. Whether or not the searches and seizures by the defendants hereinbelow complained of were unreasonable, in violation of the Fourth Amendment.

2. Whether or not the imprisonment of the plaintiffs by the defendants to be hereinbelow set forth, deprived the plaintiffs of liberty without due process of law, in violation of the Fifth Amendment.

"B. Statutory Provisions.

1. Whether or not either or both the searches and seizures by the defendants, and the imprisonment of the plaintiffs by the defendants, violated the rights of the plaintiffs conferred upon them by Title 5, U. S. Code, Sections 300 and 300a, by violating the limitations of power imposed upon said defendants by said laws."

[Appendix "A" attached to Motion to Reverse Judgment, printed following p. 180 of Vol. II of the Record herein, pp. 12, 13.]

> genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto, . . . and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." (Italics ours.)

If the scope of Articles IV and V of the Bill of Rights and Title 5, U. S. Code, Sections 300 and 300a, are given a construction or effect by the federal courts favorable to the petitioners, the petitioners' rights will be supported and they will be entitled to prevail; if, on the other hand, the federal courts give these same provisions of the Federal Constitution and these same federal statutes a different construction or effect, adverse to the petitioners and favorable to the defendants, the petitioners' claims will be defeated.

Hence the complaint raises a substantial controversy as to the scope, meaning or effect of provisions of the Federal Constitution, and requires the federal courts to pass upon, construe, interpret and apply additionally, certain particular federal statutes. A consideration and interpretation of these federal statutes, as well as the provisions of the Fourth and Fifth Amendments to the Constitution by the District Court, was necessary, indispensable and inescapable. The controversy between the petitioners and the defendants as to meaning, scope and effect of the constitutional provisions and the federal statutes referred to is substantial, direct, genuine, and is disclosed affirmatively and completely in the complaint itself.

Moreover, in the instant case, the search alleged to have been carried out by the defendants is asserted to be "unreasonable" within the proscriptions of the Fourth Amendment. The complaint accordingly called for a construction by the federal Courts, including the District Court below, as to the meaning and application of the phrase "unreasonable"—a construction which could have been made adequately by the District Court below only after a hearing on the merits, and not by the District Court's summary dismissal of the complaint.

Where the construction of a phrase in a federal statute is required, the cause may be deemed to "arise" under a law of the United States, within the meaning of 28 U. S. C., Sec. 41 (1). This would seem to be the import of the *Tunstall* decision by this Court. There this Court ruled that a federal District Court had jurisdiction because called upon to construe and apply the phrase "representative" in the Railway Labor Act; here the District Court was called upon to construe and apply the phrase "unreasonable" in the Fourth Amendment.

Said the Chief Justice, for this Court, in the *Tunstall* case:

> "We also hold that the right asserted by petitioners which is derived from the duty imposed by the Railway Labor Act on the Brotherhood, as bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct. The extent and nature of

> the legal consequences of this condemnation, though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted.' "[9]

On the facts, it might be claimed that the instant case is stronger than *Tunstall's* case: for in the latter, the suit was for damages (and injunction) against private parties; here it is for damages against federal officers, who claim to have acted as such and under their authority as such officers.

In any event, the language of this Court in the *Tunstall* decision may be thus paraphrased to apply to the instant case:

The rights asserted by the petitioners are derived from the guarantees of the Fourth and Fifth Amendments; and arise from a duty imposed by these Articles of the Bill of Rights, upon the defendants, as law enforcement officers, not to abridge those guarantees. These rights of the petitioners are expressed in the Constitution; and the duty imposed upon the defendants not to abridge them, is implied from the Constitution. It is the federal Constitu-

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[9] The Department of Justice, in a brief *amicus curiae* filed in the *Tunstall* case thus stated the applicable law:

> "The cause of action in the *Tunstall* case thus 'Clearly has its origin (in) and is controlled by the Railway Labor Act, and this is sufficient."

"We paraphrase the language of the Department of Justice as applied to the instant case: The cause of action of the petitioners thus clearly has its origin in, and is controlled by, the Fourth and Fifth Amendments; and this is sufficient.

tion that condemns the conduct of the defendants complained of in the petitioners' complaint as unlawful. And, finally, the extent, nature, and legal consequences of the Constitutional condemnation of the Fourth and Fifth Amendments, though left to judicial determination, are nevertheless to be derived from those Amendments, and from the federal policy they have adopted. The petitioners' case is therefor one arising under the federal Constitution.

Furthermore, the cases which sustain the jurisdiction of federal District Courts in suits for damages against federal officers, involving the construction or effect of process or of bonds, are not to be distinguished away. They are *Bock v. Perkins*, 139 U. S. 628; *Howard v. United States*, 184 U. S. 676 and *U. S. ex rel. Rogers v. Conklin*, 1 Wall. (68 U. S.) 714. Surely if there is jurisdiction in the federal courts, in suits against federal officers for damages, under process or instruments authorized by a federal statute, there must then more certainly be jurisdiction, where the suit arises out of the federal statute (or the Constitution)[10] directly.

The decision of the Circuit Court below analyzed.

The decision of the Circuit Court finds strict legal support in only one court decision—that of a United States District Court. *Taylor v. DeHart*, 22 Fed. (2d) 206 (D. C. Mo.) is the only reported decision holding that suit against federal officers for damages resulting from unlaw-

[10]The source of all federal statutes.

ful search and seizure may not be prosecuted in a federal District Court.

2. The Circuit Court accepts in principle decisions of this Court [R. 11, 174], *Cohen v. Virginia*, 19 Wheat. 264; *Osborn v. Bank of the United States*, 9 Wheat. 738, but fails to apply the law of these cases to the instant case.

3. The Court below seeks to distinguish the *Tunstall* case, because the latter arose under a law regulating commerce.

But the particular federal statute under which a cause of action arises can make no difference. Title 28, Sec. 41 (1) gives no priority to any federal law.[11]

28 U. S. Code, Sec. 41 (8) is comparable to 28 U. S. Code, Sec. 41 (1). Section 41 (8) confers original jurisdiction on the United States District Courts in suits "*arising* under law regulating commerce; Sec. 41 (1) confers such jurisdiction where a suit '*arises* under the Constitution or laws of the United States.'" (Italics supplied.) Whether or not a suit thus "arises" poses the same question of law, and of statutory construction.

The only difference between the two sub-sections is that Sec. 8 contains no minimum monetary requirement. That the instant complaint discloses a controversy exceeding the sum of $3000 is not questioned. (Compare the statement of

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[11]So far as jurisdiction of the federal District Courts are concerned, the Constitution is on a par with federal statutes. *Cf.* 28 U. S. C., Sec. 41 (1).

the Circuit Court below: "The damages prayed for far exceed the jurisdiction requirements as to value in controversy." [R. II, 169].)

4. Insofar as the Circuit Court below relies heavily, in its reasoning, on the "conspiracy" allegations in the original complaint [as for example at R. II, 174, 171], its decision is wanting in support, in view of the "Proposed Amended Complaint" which the petitioners sought permission to file in the District Court, in which Amended Complaint all conspiracy recitals are omitted [p. 12 of Appendix "A" attached to Motion to Remand Cause, appearing following p. 180 of Vol. II of the Record herein].

The Circuit Court proffers no reason for its refusal to remand the cause to the District Court to afford the petitioners an opportunity to file an Amended Complaint omitting all the conspiracy features of the original complaint. [R. II, 178.]

The "Proposed Amended Complaint" outlined in specific detail the constitutional and statutory provisions, the construction or effect of which are put in issue by the Amended Complaint, as follows:

"A. Constitutional Provisions.

1. Whether or not the searches and seizures by the defendants hereinbelow complained of were unreasonable, in violation of the 4th Amendment.

2. Whether or not the imprisonment of the plaintiffs by the defendants to be hereinbelow set forth, deprived the plaintiffs of liberty without due process of law, in violation of the 5th Amendment.

"B. Statutory Provisions.

1. Whether or not either or both the searches and seizures by the defendants, and the imprisonment of the plaintiffs by the defendants, violated the rights of the plaintiffs conferred upon them by Title 5, U. S. Code, Sections 300 and 300a, by violating the limitations of power imposed upon said defendants by said laws." [Appendix "A," p. 13, attached to Motion to Reverse Judgment, appearing in Vol. II of Record following p. 180.]

The complete text of the jurisdictional allegations both in the original complaint and the proposed amended complaint are set forth in footnote 8, at p. 13, *supra*.

Conclusion.

The defendants have authority, power and prestige on their side; the petitioners are associates of a minority group, at the moment convicted of "sedition"[12]—the victims, they believe, of wartime prejudice and passions.

But the defendants, no matter their power or prestige, are not above the law; and the petitioners no matter their guilt or innocence, are not outside the pale of constitutional protection.

Under our form of government, the only remaining governmental agency with the authority and duty to bring the defendants to account at the bar of justice on the one hand, and to accord to the petitioners, on the other hand, the reality of constitutional right—is the courts.

The District Court below had ample jurisdiction so to do.

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[12]Their appeal from the conviction is now pending before the Ninth Circuit Court of Appeals, *Bell v. United States*, No. 10432, 9 C. C. A.

What is there in law, in reason, and in common fair dealing[13] to prevent this Court from so ruling?

Said Justice Cardozo in the *Gully* case (299 U. S. 109, 117):

> "What is needed (in determining whether a case arises under the Constitution or law of the United States) is something of that common sense accommodation of judgment to kaleidoscopic situations which characterizes the law in its treatment of problems of causation."

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[13]To the petitioners, the effect of an action by this Court, relegating them to pursue their cause in the state courts, will be more than an academic ruling on the appropriate forum to assert their claims. A cause of action for illegal abridgement of personal rights is barred by California law, by a one year Statute of Limitations. (California Code of Civil Procedure, Sec. 340.) This statutory period had elapsed prior to the ruling of the District Court below. The alleged unreasonable searches and seizures took place on December 18, 1942. The instant complaint was filed seasonably in the United States District Court below on April 7, 1943 [R. I, 39]. The District Court did not order the complaint dismissed of its own motion until *March 20, 1944*, when the California one year Statute of Limitations had run. Upon the filing of a suit in the Superior Court of Los Angeles County, subsequent to the District Court's ruling, the petitioners herein were met with a demurrer urging the one year Statute of Limitations. The Los Angeles Superior Court sustained the demurrer, so far as the cause of action in the State Court involved abridgment of personal rights. *Bell v. Adams*, Los Angeles Superior Court, No. 492469.

Said the Solicitor General of the United States in the Department of Justice's brief in the *Tunstall* case (Brief *Amicus Curiae*, p. 42):

> "Obviously the enforcement of duties created by the Federal Act (the Railway Labor Act) should not be left exclusively to the State Courts."

Just as obviously, common sense calls for a ruling from this Court that the federal District Court below had jurisdiction of this cause. Is it "common-sense" to shut the

doors of the *federal* courts to the citizen when his complaint is that a *federal* official, acted under color of *federal* authority, but in excess of *federal* power, and in violation of his *federal* rights?[14]

The petition for certiorari should accordingly be granted; and the judgment of the Court of Appeals below be reversed. In the alternative, the order of the Cir-

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[14]The instant cause poses the problem of comity between the federal and state courts in reverse of the phase in issue in *Watson v. Buck*, 313 U. S. 387; *Douglas v. Jeanette*, 319 U. S. 157, and companion cases. Here we have no congressional policy leaving primary jurisdiction to state tribunals. On the contrary congressional policy is to the effect that the United States District Court shall have primary jurisdiction over violation by federal officers of the Fourth Amendment.

Cf. Lefkowitz v. United States, 285 U. S. 452, upholding the jurisdiction of the federal courts to order the return of papers illegally seized, without a search warrant. *Cf.* 18 U. S. C., Sec. 626, conferring jurisdiction on the federal courts to order the return of documents illegally seized, under a search warrant. See, also, 18 U. S. C., Sec. 53a and Sec. 631 conferring jurisdiction on the federal courts for the prosecution of federal officers for illegal searches, without, and with, respectively, search warrants.

It seems passing strange, accordingly, that a controversy involving the conduct of federal officers should be relegated to the state courts for airing and arbitrament. Common sense and logic would seem to suggest that the appropriate forum for misconduct by state officers should originally be the state courts; and, contrariwise, misconduct by federal officers should be passed upon by the federal courts.

The reluctance which this Court has shown in removing from the state courts original jurisdiction to determine the ambit of state problems, should be applied equally by the exercise of federal judicial self-restraint in thrusting upon the state courts, the burdens of airing controversies involving the misconduct of federal officers.

In the instant case the federal nature of the controversy is further seen from the fact that the federal government through the United States Department of Justice has defended the cause at all stage of the proceedings. Thus the defendants appeared by the United States Attorney for the Southern District of California in the trial court. [R. I, 31-32.] Similarly, the United States Attorney represented the defendants in the Circuit Court below. [R. I, 163.]

In this Court it is anticipated that the defendants will appear by the Solicitor General (cf. Rule 38 (3) of this Court).

cuit Court below denying the petitioners' Motion to Reverse Judgment with instructions to grant leave to file an amended complaint should be reversed.

Respectfully submitted,

A. L. WIRIN,

RUSSELL E. PARSONS,

By A. L. WIRIN,

Counsel for Petitioners.

APPENDIX.

Title 28, Section 41. (Judicial Code, Section 24., amended.) Original jurisdiction.—The district courts shall have original jurisdiction as follows:

(1) "*United States as plaintiff, civil suits at common law or in equity.*—First. Of all suits of a civil nature, at common law or in equity, brought by the United States, or by any officer thereof authorized by law to sue, or between citizens of the same State claiming lands under grants from different States; or, where the matter in controversy exceeds exclusive of interest and costs, the sum or value of $3,000, and (a) arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority, or (b) is between citizens of different States, or (c) is between citizens of a State and foreign States, citizens, or subjects."

Title 5, U. S. Code, Section 300.

"*Officials for detection and prosecution of crime.*—For the detection and prosecution of crimes against the United States, and for the acquisition, collection, classification, and preservation of criminal identification records and their exchange with the officials of States, cities, and other institutions, the Attorney General is authorized to appoint officials who shall be vested with the authority necessary for the execution of such duties."

Title 5, U. S. Code, Section 300a.

"*Director, assistant directors, agents, and inspectors of division of investigation empowered to serve*

process, make arrests.—The Director, Assistant Directors, agents, and inspectors of the Division of Investigation of the Department of Justice are empowered to serve warrants and subpoenas issued under the authority of the United States; to make seizures under warrant for violation of the laws of the United States; to make arrests without warrant for felonies which have been committed and which are cognizable under the laws of the United States, in cases where the person making the arrest has reasonable grounds to believe that the person so arrested is guilty of such felony and where there is a likelihood of the person escaping before a warrant can be obtained for his arrest, but the person arrested shall be immediately taken before a committing officer. Such members of the Division of Investigation of the Department of Justice are authorized and empowered to carry firearms."